

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL McCEE FOUNTAIN,

Petitioner,

No. CIV S-04-2350 GEB DAD P

vs.

JAMES YATES, Warden, et al.,

Respondents.

ORDER

The pro se petitioner seeks to add an exhibit to his traverse. The proposed exhibit is a three-page document titled "State of California Department of Finance Race/Ethnic Population Changes: Components of Change for California Counties, April 1990 to July 1999."

Petitioner previously submitted the proposed exhibit as an attachment to a letter addressed to the clerk of the court. Petitioner was directed to file a motion establishing the identity and authenticity of the document and demonstrating that the document should be included in the record. (See Order filed June 28, 2005, at 1-2.) In compliance with the court's order, petitioner filed a motion to expand the record. The court directed the parties to brief the motion. (See Order filed Sept. 15, 2005, at 2.)

In opposition to petitioner's motion, respondents contend that the census report proffered by petitioner is not relevant to petitioner's Strickland/Batson claim that defense counsel

1 provided ineffective assistance by failing to challenge the jury pool and that, if anything, the  
2 document supports the state court's rejection of petitioner's claim. In reply, petitioner argues that  
3 the court may permit the expansion of the record to include his proposed exhibit because it  
4 relates to the petition and may eliminate unnecessary hearings.

5 The court may permit the expansion of the record in a habeas proceeding to  
6 include "additional materials relating to the petition." Rule 7(a), Fed. R. Governing § 2254  
7 Cases. The court may require that such materials be authenticated, and the court must give the  
8 opposing party an opportunity to admit or deny the correctness of the materials. Rule 7(a) and  
9 (c), Fed. R. Governing § 2254 Cases. The census report proffered by petitioner appears to  
10 constitute material "relating to the petition." The court will permit petitioner to expand the  
11 record to include the census report as Exhibit I to his traverse.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Petitioner's July 27, 2005 motion to expand the record is granted;  
14 2. The exhibit attached to petitioner's July 27, 2005 motion is deemed Exhibit I  
15 to petitioner's traverse filed March 14, 2005;  
16 3. Petitioner's January 24, 2006 request for emergency expedition is denied as  
17 moot in light of the order of the United States Court of Appeals filed in this case on April 21,  
18 2006; and  
19 4. Petitioner's May 2, 2006 request for judicial notice of the April 21, 2006 order  
20 is denied as unnecessary.

21 DATED: May 4, 2006.

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25 DALE A. DROZD  
26 UNITED STATES MAGISTRATE JUDGE

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